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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER	
HON, SOW FUN	

ART UNIT	PAPER NUMBER
1772	

DATE MAILED: 08/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/760,337	PETTIS, RODNEY L.	
	Examiner	Art Unit	
	Sow-Fun Hon	1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *20 June 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-27* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-27* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Rejections Repeated

1. The 35 U.S.C. 103(a) rejection of claims 1-27 over Schirmer has been repeated for the same reasons previously of record in the Office action dated 03/24/05.

Response to Arguments

2. Applicant's arguments filed 06/20/05 have been fully considered but they are not persuasive.

3. Applicant argues that Schirmer only describes two general embodiments for a multilayer film, the first one being a multilayer film comprising a core layer comprising a very low density polyethylene; two outer layers each comprising a styrene butadiene copolymer and two intermediate layers each bonding the core layer to a respective outer layer, and comprising a polymeric adhesive; and provides 23 different test results utilizing said embodiment; the second embodiment being an alternative one in which a single layer of very low density polyethylene may be adhered either directly or by means of a polymeric adhesive layer to a single layer of styrene butadiene copolymer, concluding that nowhere does Schirmer show, teach or suggest an embodiment in which an inner layer of polyolefin is positioned between, and abuttingly contacts, first and third outermost layers of elastomer.

Applicant is respectfully reminded that Schirmer teaches that the shrink-wrap packaging film comprises a first outermost layer of elastomer, a second inner layer of polyolefin overlying the first outermost layer of elastomer, and a third outermost layer of

elastomer overlying the second inner layer of polyolefin wherein both the first and third outermost layers of elastomer are adhered to the second inner layer of polyolefin by means of a polymeric adhesive intermediate layer (column 3, lines 10-20). Schirmer also teaches that the elastomer (styrene butadiene copolymer) layer is directly adhered to the polyolefin (very low density polyethylene) layer, as an alternative to using a polymeric adhesive disposed between the two layers (column 12, lines 34-48). Therefore, although Schirmer fails to disclose any examples wherein both first and third outermost layers of elastomer are directly adhered to the second inner layer of polyolefin instead of through a polymeric adhesive intermediate layer, because Schirmer teaches that an elastomer layer can be directly adhered to a polyolefin layer as an alternative to using a polymeric adhesive intermediate layer between the two layers, it would have been obvious to one of ordinary skill in the art at the time the invention was made, to have directly adhered the first and third outermost elastomer layers to the second inner layer of polyolefin, in order to obtain a thinner multilayer film with the same properties provided by the three layers.

4. Applicant argues that Schirmer in fact teaches away from the second embodiment being modified to form such a structure since Schirmer teaches that it was discovered that as the thickness of the elastomer (SBC) layers is decreased, the final film exhibited better elasticity, concluding that it would be counterintuitive to one of ordinary skill in the art to add an additional elastomer (SBC) layer to the embodiment containing a single layer of polyethylene and a single layer of the structure as this would increase the total thickness of the SBC layering of the structure.

Applicant is respectfully reminded that the especially preferred films wherein the thickness of the outer layers (note plural) is downgauged in order to produce a film with better elasticity, contain two outer layers [of elastomer] (column 9, lines 42-60).

5. Applicant argues that each of Applicant's claims [7, 9, 11-12, 14, 22-24, 26-27] deal with a specific numeric limitation or range relating to a feature of Applicant's invention, wherein the specific numerical values claimed by Applicant are new and surprising results, while Schirmer only makes broad and general representations regarding certain of the advantageous features of its film.

Applicant is respectfully apprised that a chemical composition and its properties are inseparable. Therefore, if the prior art teaches the identical chemical structure, the properties applicant discloses and/or claims are necessarily present. In re Spada, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990). See MPEP 2112.01. In the instant case, Schirmer teaches that the two outer layers of elastomer are formed from styrene butadiene copolymer (column 7, lines 5-10), the same materials claimed by Applicant (original claim 2), and that the inner layer of polyolefin is formed from polyethylene and/or ethylene vinyl acetate which is an ethylene/unsaturated ester copolymer, the same materials described in Applicant's specification (page 11, section 0048). Therefore the specific numerical values claimed by Applicant are necessarily present or the result of routine optimization by one of ordinary skill in the art at the time the invention was made, in order to enhance the desired properties. Applicant has not provided a showing of unexpected results over the film of Schirmer. Furthermore,

Schirmer teaches the presence and desirability of the properties claimed by Applicant, albeit not disclosing the specific numeric values.

Regarding claims 7, 22, although Schirmer fails to teach that the enhanced optical properties comprises a haze in the range of about 1 % to about 10 % so that the packaging film is clear and the product can be easily seen through the packaging film once the packaging film is heated to securely restrain the product with the packaging film, because Schirmer teaches that the film is ultra clear (column 8, lines 1-5), and because zero haze is very difficult to achieve, the claimed haze in the range of about 1 % to about 10 % is present in the ultra clear film so that the packaging film is clear and the product can be easily seen through the packaging film once the packaging film is heated to securely restrain the product with the packaging film.

Regarding claims 9, 22, 27, although Schirmer fails to teach a 45° gloss in a range of about 70% to about 110%, because Schirmer teaches that the film is ultra-clear and glossy (column 8, lines 1-5) hence teaching the desirability of clarity and gloss, the claimed 45° gloss in a range of about 70% to about 110% is either present in the film, or the result of optimizing the processing conditions of the packaging film by one of ordinary skill in the art at the time the invention was made, so that the product can be easily seen through the packaging film once the packaging film is heated to securely restrain the product with the packaging film..

Regarding claims 11, 23, although Schirmer fails to disclose a tensile modulus in a range of about 50, 000 psi to about 120, 000 psi, because Schirmer teaches that the packaging film has higher modulus and toughness to permit its use with a label

manufacturing apparatus (column 1, lines 47-58), hence teaching the desirability of a high tensile modulus, the claimed tensile modulus in a range of about 50, 000 psi to about 120, 000 psi, is either present in the film, or the result of optimizing the processing conditions of the packaging film by one of ordinary skill in the art at the time the invention was made, so that the shrink-wrap packaging film is readily usable with packaging machinery at relatively high speeds.

Regarding claims 12, 24, although Schirmer fails to disclose a tensile strength in a range of about 2,000 psi to about 3500 psi, because Schirmer teaches that the packaging film has higher modulus and toughness (column 1, lines 47-58), hence teaching the desirability of a high tensile strength, the claimed tensile strength in a range of about 2,000 psi to about 3500 psi, is either present in the film, or the result of optimizing the processing conditions of the packaging film by one of ordinary skill in the art at the time the invention was made, so that the shrink-wrap packaging film can withstand forces applied thereto being placed upon the shrink-wrap packaging film.

Regarding claims 13, 25, although Schirmer fails to disclose a shrink in a transverse direction of about 0 % to about 60 % and in a machine direction of about 60 % to about 90 %, because Schirmer teaches that orientation is imparted in primarily the transverse direction, or both the transverse direction and the machine (longitudinal) direction (column 5, lines 35-45), which then dictates how much shrinkage occurs in the transverse direction and the machine direction, and that the film shrank tightly around the product (column 8, lines 10-20), it would have been obvious to one of ordinary skill in the art at the time the invention was made, to have provided the claimed shrink in a

transverse direction of about 0 % to about 60 % and in a machine direction of about 60 % to about 90 %, by varying the degree of orientation and shrink conditions, in order to obtain a shrink-wrap packaging film which shrinks sufficiently to securely restrain the product within the shrink-wrap packaging film.

Regarding claims 14, 26, although Schirmer fails to disclose a dart impact strength in a range of about 300 grams to about 1000 grams, because Schirmer teaches that the packaging film has higher modulus and toughness (column 1, lines 47-58), hence teaching the desirability of a high toughness and hence high impact strength, the claimed dart impact strength in a range of about 300 grams to about 1000 grams, is either present in the film, or the result of optimizing the processing conditions of the packaging film by one of ordinary skill in the art at the time the invention was made, so that the shrink-wrap packaging film is not punctured easily when an outside force is applied thereto.

6. Applicant argues that there is no teaching or suggestion [by Schirmer] that if the adhesive layers were removed, that the middle polyethylene layer would remain the same size and that the two outer layers would increase in size; but rather it is possible that if the adhesive layers were removed, for example, the middle polyethylene layer would remain the same size (42 %) and the two outer layers would increase in size (58%/2 = 29 % each).

Applicant is respectfully reminded that Schirmer teaches that the first and third outermost layers of elastomer each is about 13 %, which is within the claimed range of about 10 % to about 25 %, of the final film gauge thickness (column 8, lines 5-10),

which means that without the intermediate adhesive layers, the second inner layer of polyolefin would form about (100 – (2 x 13)=) 74 % of the final gauge thickness, which is within the claimed range of about 50 to about 80 %. This is consistent with Schirmer's teaching that better elasticity is obtained if the thickness of the outermost layers were downgauged (column 9, lines 42-45). Applicant's hypothetical example is not consistent with Schirmer's teaching, the two outer layers being so thick.

7. In response to Applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Sow-Fun Hon whose telephone number is (571)272-1492. The examiner can normally be reached Monday to Friday from 10:00 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached at (571)272-1498. The fax phone number for the organization where this application or proceeding is assigned is (571)273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

S. Hon

Sow-Fun Hon

07/13/05

HAROLD PYON
SUPERVISORY PATENT EXAMINER

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